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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/795,782  | 03/08/2004  | Boyd Perttu          | P18-005-01-US       | 1597             |
| 22854   | 7590        | 06/14/2005           | EXAMINER            |                  |
| MOORE, HANSEN & SUMNER, PLLP<br>225 SOUTH SIXTH ST<br>MINNEAPOLIS, MN 55402 |             |                      | ROWAN, KURT C       |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3643                |                  |

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/795,782

Applicant(s)

PERTTU, BOYD

Examiner

Kurt Rowan

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3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 8, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown.

The e patent to Brown shows a bait container having a cylindrical housing C with an access opening (not labeled), an at least partially perforated 4 carriage 3 located within the housing, a post 6 extending from the carriage and a door 13 substantially located in a vertical plane parallel to the central axis and arranged to move in the vertical plane between an open position to expose the axis opening and a closed position to at least partially cover the access opening in response to movement of the post along the central axis. Brown shows a handle L and a lip 3. Brown shows a chamber on the inside of the housing C.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown.

The patent to Brown has been discussed above and shows a cylindrical housing, but in reference to claim 10, it would have been obvious to employ a polyhedral housing since the shape of the housing is a matter of design choice since the function is the same and no stated problem is solved. Also, see *In re Dailey et al.*, 149 USPQ 47.

5. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartman in view of Kirmss.

The patent to Hartman shows a bait container having a housing 10 defining an access opening 13, a perforated carriage 16 located within the housing, a post 20 extending from the carriage substantially along the central axis and movable along the central axis. Hartman show a door 14 substantially located in a vertical plane parallel to the central axis and arranged to move between an open position and a closed position as shown in Fig. 8 and Fig. 7 by rotating around pin 15. The patent to Kirmss shows a container 1 having a vertically moveable door 19 to cover or expose access opening 14. In reference to claim 1, it would have been obvious to provide Hartman with a vertically movable door as shown by Kirmss since merely one door movement is being substituted for another and the function is the same. In reference to claim 2, Hartman shows a elongated slot 26 along the central axis with door 14 having a rigid link 27 arranged to interact with the elongated slot to cause the door to move. In reference to claim 3, Hartman shows a handle 22 connected to the post.

6. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartman in view of Kirmss as applied to claim 3 above, and further in view of Johnson.

The patents to Hartman and Kirmss have been discussed above and do not show a locking arrangement. The patent to Johnson shows a container having a locking arrangement 7, 8, 21. In reference to claim 4, it would have been obvious to provide the container of Hartman as modified by Kirmss with a locking arrangement as shown by Johnson to retain the door in a set position. In reference to claim 5, Johnson shows a rotatable latch arrangement.

7. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartman In view of Kirmss as applied to claim 1 above, and further in view of Lee. The patents to Hartman and Kirmss have been discussed above and do not show a plurality of track arranged to guide the door to move in the vertical plane. Kirmss shows the stud 18 with finger nut 22 guided in a slot 17. The patent to Lee shows a plurality of tracks 30, 30 arranged to guide door 32 in a vertical plane. In reference to claim 6, it would have been obvious to provide the container of Hartman as modified by Kirmss with a plurality of vertical tracks as shown by Lee to guide the door in a vertical direction since merely one guide means is being substituted for another and the function is the same.

### ***Response to Arguments***

8. Applicant's arguments filed March 30, 2005 have been fully considered but they are not persuasive. Applicant's arguments do not overcome Brown noting the new interpretation of Brown in regard to claim 1 as stated above. Applicant argues that Brown shows a tooth brush holder which is correct. However, applicant is not claiming bait merely a container for holding bait. Brown shows the structure to perform the

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intended use of holding bait and water noting Figs. 1-3. In regard to the rejection under Hartman in view of Kirmss, in response to applicant's argument that Kirmss is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Kirmss is reasonably pertinent to the particular problem with which applicant is concerned since both references show containers with different types of door movement and Kirmss merely shows another type of mechanical door movement. Logically the door of Kirmss would have commended itself to an inventor's attention in considering his problem. Kirmss is concerned with removal of an item from a container as is Hartman. The rejection is based on one type of door movement being substituted for another noting that the function of Hartman would be the same. The same argument applies to Johnson who shows a container similar to that of Hartman and Kirmss and is concerned about a locking arrangement for retaining an item in the container. Thus Johnson logically would have commended itself to an inventor's attention in considering his problem of a locking arrangement for selectively securing the post to thereby maintain the door in a closed position.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. The claims should be amended to recite the invention more precisely particularly how the various structural elements interact such as the lip and the door.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Kurt Rowan", with a checkmark-like flourish at the end.

Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR